IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 525 of 2006

JFC Finance (India) Ltd.
Mahawar Market, Paltan Bazar
Near Ghosi Gali, Dehradun
District Dehradun, through its
Managing Director Subhas Dora .... Applicant

Vs

1. State of Uttaranchal
2. Ravindra Singh Kalsi
   S/o Late Shri Jaimal Singh Kalsi
   At present residing at A-61/6,
   District Dehradun .... Respondents

Sri Ramji Srivastava, learned counsel for the applicant/petitioner

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr.P.C. has been filed by the applicant for quashing the proceedings in Criminal Case No. 353 of 2005 Ravindra Singh Kalsi Vs J.F.C. Finance (India) Ltd. & another under Section 138 of Negotiable Instruments Act pending in the court of Judicial Magistrate, C.B.I., Dehradun.

2. Brief facts of the case are that respondent No. 2 – Ravindra Singh Kalsi filed a complaint under Section 138 of Negotiable Instruments Act against the petitioner (Company) on the ground that the petitioner runs one Financing Company with the name and title as "JFC Finance (India) Ltd. It has also been alleged in the complaint that the applicant in connivance with another person, namely, Brijesh Chadda who happens to be the Manager (Finance) of the Company asked the applicant to deposit Rs. 5.00 lacs in the Company and the Company will provide him a good interest on the deposited amount. The complainant on the assurance given by the

petitioner deposited an amount of Rs. 5.00 lacs with the Company but subsequently the Company neither paid back the amount nor paid the interest thereon. Hence, the complainant asked the petitioner to refund his money.

3. The Manager (Finance) of the Company issued the cheque to the complainant which was subsequently dishonored. The complainant thereafter issued a notice to the petitioner but he did not get any response to that, hence he filed the complaint before the court concerned.

4. The Judicial Magistrate, C.B.I., Dehradun after having perused the complaint and the statement of the complainant as well as witnesses came to the conclusion that there was a prima-facie case to proceed against the petitioner, hence, passed the summoning order dated 02.12.2005.

5. The petition has been preferred against the aforesaid impugned order as well as for quashing the criminal proceedings pending against the petitioner before the trial court.

6. Heard Sri Ramji Srivastava, learned counsel for the petitioner, learned A.G.A. and perused the record.

7. Learned counsel for the petitioner has argued that the cheques were not issued by the petitioner but it was issued by Brijesh Chadda (deceased) who happens to be the Manager (Finance) of the Company at the time of issuing the cheques. Therefore, no liability can be fastened upon the petitioner.

8. I fail to appreciate the arguments advanced by the learned counsel for the petitioner.

9. Section 141 of the Negotiable Instruments Act deals with regard to the offences by companies, which reads as under:-

"141. Offences by companies- (1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that noting contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Provided further that where a person is nominated as a Director of a Company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation- For the purposes of this section,-

(a)"Company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm."

10. From the perusal of the aforesaid provision it is quite clear that the petitioner was the Managing Director of the Company when the offence was committed, therefore he was very well incharge of and was responsible to the company for the conduct of business of the company. From the averments made in the complaint it is very clear that the petitioner being the Managing Director of the Company, in-connivance with his near relative Brijesh Chadda who happens to be the Manager (Finance) of the Company, used to collect the money from different persons in the account of the Company. Therefore, the petitioner cannot get the benefit of this aspect that the cheques were issued by the Manager (Finance) of the Company and the petitioner is not liable for any offence.

11. Learned Counsel for the petitioner has also argued that he cheques were in fact issued by Brijesh Chadda in his personal capacity as when the money was deposited by the complainant, it was assured by Brijesh Chadda to deposit the money in his personal account. Therefore, the money was not deposited in the account of the Company, hence, the petitioner cannot be said to be liable for the offence and the cheques were not issued from the account maintained by the Company.

12. This argument is devoid of any force as there is a sufficient allegation in the complaint with regard to the liability of the accused/Company and the petitioner who is the

Managing Director of the Company and being the Managing Director of the Company, the liability is certainly fastened on the petitioner. Whether the petitioner is actually liable or not, will have to be considered through the evidence before the trial Judge. I am not supposed to act as a trial judge while exercising the powers under Section 482 Cr.P.C. There is no material available on record to show that the complaint is malafide, frivolous and vexatious, therefore, there is no reason to quash the proceedings pending before the trial court.

13. At this stage, I do not find any abuse of process of the court. I also could not find, on the basis of the material available on record that any mandatory provision of law has not been complied with.

14. I, therefore, do not find any merit in this case. Accordingly, the petition under Section 482 Cr.P.C. is dismissed.

(B.C. Kandpal, J.)

12.07.2006
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